

REMARKS

This Amendment is submitted in reply to the final Office Action mailed on April 18, 2006. No fee is due in connection with this Amendment. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-573 on the account statement.

Claims 1-2, 4-5, 10-12, 14-16 and 19-20 are pending in this application. Claims 3, 6-9, 13, 17-18 and 20 were previously canceled. In the Office Action, Claim 1 is objected to, Claims 1-2, 4-5, 11-12, 14-16 and 19-20 are rejected under 35 U.S.C. §112, second paragraph, Claims 1-2, 4-5, 11-12, 14, 16 and 19-20 are rejected under 35 U.S.C. §102 and Claims 10 and 15 are rejected under 35 U.S.C. §103. In response Claim 1 has been amended. This amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claim 1 is objected to. In response, Applicants have amended Claim 1 to address the informalities cited by the Patent Office. Accordingly, Applicants respectfully request that the objection to Claim 1 be withdrawn.

In the Office Action, Claims 1-2, 4-5, 11-12, 14-16 and 19-20 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as their invention. In response, Claim 1 has been amended to address the informalities cited by the Patent Office. Based on at least these noted reasons, Applicants believe that Claims 1-2, 4-5, 10-12, 14-16 and 19-20 fully comply with 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claims 1-2, 4-5, 11-12, 14-16 and 19-20 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-2, 4-5, 11-12, 14, 16 and 19-0 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,897,899 to Fond ("*Fond*") in view of U.S. Patent No. 4,136,202 to Favre ("*Favre*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Applicants have amended independent Claim 1 to recite, in part, a sealed cartridge comprising a second sheet material that is air permeable and is selected from the group

consisting of filter paper, non-woven fiber material and combinations thereof. The amendment is supported in the specification, for example, at page 3, lines 26-29. In contrast, *Fond* and *Favre* fail to disclose or suggest every element of the present claims.

Applicants submit an Affidavit under 37 C.F.R. §1.132 (“*Affidavit*” attached hereto as Exhibit A) that demonstrates some of the aspects that distinguish the prior state of the art from the claimed invention. As supported by the *Affidavit*, *Fond* fails to disclose or suggest a capsule with an air permeable second sheet made of filter and/or non-woven fiber as required, in part, by Claim 1. In other words, *Fond* fails to disclose a capsule with an air permeable second sheet material that allows the beverage to pass through it by effect of the fluid pressure alone, for example, when the overpressure of between 0.1 to 3 bar is reached. In fact, *Fond* teaches a capsule having a “tear face” requiring tearing of an airtight sealed membrane in order for the beverage to be released from the cartridge. See, *Fond*, column 2, lines 59-67 and column 5, lines 49-54. *Fond* specifically teaches that its tear face has a character of a foil of aluminum or plastic that is impermeable to oxygen. See, *Fond*, column 5, lines 49-54.

Moreover, *Fond* teaches a capsule in which the beverage is able to pass only when the tear face is broken or ruptured by external relief means. For example, *Fond* teaches that “materials employed for forming the tear face should be such that, when impinged upon the relief surface element the tear faces, in accordance with the invention, is embodied to withstand a pressure in the interior of the cartridge above 1 bar, and particularly such as a pressure within the range of from 2 bar to 15 bar, prior to breaking and tearing, such providing for the phases of extraction discussed further below.” (emphasis added.) See, *Fond*, column 5, lines 37-44. Because *Fond* teaches a tear face that can withstand pressures up to 15 bar, *Fond* actually teaches away from the present claims.

Contrary to *Fond*, the present claims are directed to simpler cartridges that can allow a fluid to pass through by the internal pressure effect of the fluid alone and not by any external opening means. The claimed second sheet has an air permeable membrane (i.e. a filter paper and/or a non woven fiber material), which does not tear but has a tight mesh in order to provide a delayed release of the fluid while remaining intact. This allows the fluid to mix with the beverage in the capsule before being passed through the second sheet. The fluid beverage passes

through the second sheet via the effect of the fluid overpressure alone when a pressure of between 0.1 and 3 bar is reached without tearing of the second sheet.

Similarly, *Favre* also fails to disclose or suggest a capsule with an air permeable second sheet made of filter and/or non-woven fiber as required, in part, by Claim 1. In fact, the Patent Office only uses *Favre* to allegedly show that score lines were known in the art.

Claims 10 and 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Fond* in view *Favre* and further in view of U.S. Patent No. 4,253,385 to Illy ("*Illy*"). Applicants respectfully submit that the patentability of Claim 1 as previously discussed renders moot the obviousness rejection of Claims 10 and 15. In this regard, the cited art fails to teach or suggest the elements of Claims 10 and 15 in combination with the novel elements of Claim 1.

Further, *Illy* fails to cure the deficiency of *Fond* and *Favre* because of the filter sheets of *Illy* are permeable to water at atmospheric pressure. The retarded opening effect cannot be obtained with *Illy*. Therefore, if *Fond* were modified with the filter sheet of *Illy* and the aluminum or plastic tear face of *Fond* removed, the retarded effect would not be obtained because the filter sheet of *Illy* would not be sufficient by itself to retain a pressure inside the capsule.

An advantage of the construction of the present invention is that it considerably reduces the complexity of the capsule because no tear face such as the aluminum or plastic of *Fond* is used. For example, the second material of the present claims can deliver the retarded/delayed fluid release effect with a rise in pressure in the capsule without tearing. Another advantage of the present invention is that there is no more need for external relief/recessed elements that must puncture or rupture the capsule's tear face further simplifying the system. For the reasons discussed above, Applicants respectfully submit that Claim 1 and Claims 2, 4-5, 11-12, 14, 16 and 19-20 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited references.

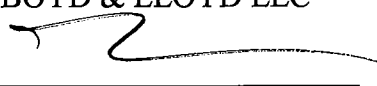
Accordingly, Applicants respectfully request that the obviousness rejections with respect to Claims 1-2, 4-5, 10-12, 14-16 and 19-20 be reconsidered and the rejections be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY



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Dated: July 18, 2006

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Yoakim et al.
Appl. No.: 10/728,342
Conf. No.: 8608
Filed: December 3, 2003
Title: SEALED FLEXIBLE CARTRIDGE
Art Unit: 1761
Examiner: Sarah Louise Kuhns
Docket No.: 112701-573

AFFIDAVIT UNDER 37 C.F.R. § 1.132

Sir:

I hereby state as follows:

1. My experience and qualifications are as follows:
Responsible for machine development and research within Nespresso
since 20 years
MBA – Postgraduate in Management – HEC
Diploma of Electrical Engineer

2. I have reviewed the outstanding Office Action dated April 18, 2006 pending against the above-identified patent application. In addition to considering the outstanding Office Action, I have reviewed the reference cited therein as well as the pending claims. I believe that the obviousness rejection of Claims 1-2, 4-5, 11-12, 14, 16 and 19-20 under 35 U.S.C. §103(a) based on U.S. Patent No. 5,897,899 to Fond ("*Fond*") and U.S. Patent No. 4,136,202 to Favre

(“*Favre*”) is based on a misunderstanding of the references and the pending claims. The basis for my opinion is set forth below.

3. The present claims are directed to, in part, a sealed cartridge comprising first and second sheet materials joined to form a space there between and a beverage-forming substance for preparing a beverage located in the space between the sheets. For example, the first material is designed to admit water into the cartridge for extraction of the beverage from the beverage-forming substance. The second material has properties to retain the water or beverage in the cartridge until an overpressure of between 0.1 to 3 bar is achieved, at which overpressure the second material will allow the extracted beverage to exit the cartridge.

4. The first sheet material is selected from the group consisting of filter paper, a non-woven fiber and combinations thereof. The second sheet is air permeable and is selected from the group consisting of filter paper, non-woven fiber material and combinations thereof. The second sheet does not tear but has a tight mesh in order to provide a delayed release of a fluid while remaining intact. This allows the fluid to mix with the beverage in the capsule before being passed through the second sheet after an overpressure of between 0.1 to 3 bar is achieved.

5. An advantage of the present invention is that a delayed fluid release effect is obtained that provides improved extraction properties and better foam properties without requiring an external opening means. Further, the sheet materials enables a simpler, lower cost capsule to be manufactured.

6. As one having ordinary skill in the art, I believe that *Fond* fails to disclose or suggest a capsule with an air permeable second sheet made of filter and/or non-woven fiber. *Fond* discloses a capsule requiring a lower impermeable tear face. For example, *Fond* teaches that a beverage is able to pass through the capsule only when the lower tear face is broken or ruptured by an external relief means. See, *Fond*, column 5, lines 37-44. *Fond* clearly teaches that this tear face has a character of a foil of aluminum or plastic that is impermeable to oxygen. See, *Fond*, column 5, lines 49-54.

tearing. See, *Fond*, column 5, lines 37-44. Because *Fond* teaches a tear face that can withstand pressures up to 15 bar, I believe that *Fond* is directed to a tear face completely impermeable to air or water. *Fond* is only directed to a closed cartridge with a bottom foil or tear face that is meant to be opened only when contacting and tearing against projections of the holder of the machine. See, *Fond*, column 4, lines 8-15. When the pressure reaches a value of between 2 to 15 bars, the tear face is pressed against the projections and it reaches its breaking stress and forms a plurality of openings. See, *Fond*, Claim 1 and column 7, lines 10-25. Consequently, the tear face of the cartridge in *Fond* is not designed to allow fluid to pass through from the fluid pressure alone when an overpressure of between 0.1 to 3 bar is reached.

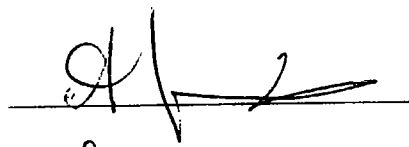
8. As one having ordinary skill in the art, I believe that *Favre* fails to disclose or suggest a capsule with an air permeable second sheet made of filter and/or non-woven fiber. *Favre* is entirely directed to a capsule having an impermeable aluminum membrane.

9. For the foregoing reasons, as one having ordinary skill in the art, it is my opinion that *Fond* and *Favre* fail to disclose or suggest a capsule with an air permeable second sheet made of filter and/or non-woven fiber. Moreover, I believe that *Fond* teaches away from such an air permeable second sheet because its teaches a tear face that is designed to withstand high fluid pressures and allow fluid to pass only after being torn by an impinging device.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18, United States Code, and that willful false statements may jeopardize the validity of this patent and any patent issuing therefrom.

Date: 14th July 2006

Print Name


Alfred Yoakim